

(2019) 04 CAT CK 0088

In the Central Administrative Tribunal

Case No : Original Application No. 1223 Of 2018, Miscellaneous Application No. 1790 Of 2018, 626 Of 2019

Mukul Arya

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0088

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : M.K. Bhardwaj, Rajeev Kumar

Final Decision : Disposed Off

Judgement

Mohd. Jamshed, Member (A)

1. This OA has been filed by the applicant seeking the following reliefs:-

"(1) To quash and set aside the order dated 29.01.2018 being illegal and direct the respondents to upgrade as 'Outstanding' the self initiated APAR of the applicant for the period 01.06.2013 to 15.12.2013.

(2) To expunge the adverse remarks/ below benchmark grading given in the APARs of the Applicant for the year 01.06.2013 to 28.02.2014 and direct the respondents to consider the applicant's claim for promotion as Deputy Secretary and other benefits at par with his batchmates with all consequential benefits AND declare the APAR for the period 01.06.2013 to 28.02.2014 as void ab-initio and treat the said period as Non Reporting Period, in order to prevent the said APAR prejudicing the applicant's career."

2. The facts of the case as stated in the OA are as under:-

The applicant belongs to 2008 batch of Indian Foreign Service. In the year 2012, the applicant was posted as Second Secretary (Political and Information) at the Embassy of India, Kabul and remained in the aforesaid position from 12.01.2012

to 15.12.2013. During the applicant's posting in Kabul, Shri Gautam Mukhopadhyaya was the Ambassador of India to Afghanistan and the Reviewing Officer for the applicant's APAR for the period from January, 2012 to May, 2013 and Shri Amar Sinha, the next Ambassador was the Reviewing Officer for the period 01.06.2013 to 15.12.2013. It is stated that the APARs for the period January, 2012 to March, 2013 were submitted within the stipulated time to the then Deputy Chief of Mission (DCM) at the Embassy of India, Kabul, Shri A. G. Algur, who was the Reporting Officer of the applicant. Similarly, the self initiated APAR for the period 01.04.2013 to 30.09.2013 was also submitted to the Reporting Officer, Shri A. G. Algur timely. The Reporting Officer retired on 30.09.2013. It is stated that despite having submitted the APAR to the Reporting Officer in time, the Reviewing Officer, Shri Amar Sinha, the then Ambassador directed the applicant to resubmit the APAR for the period 01.06.2013 to 15.12.2013.

3. As stated, the applicant resubmitted the APARs from 1. 06.2013 to 15.12.2013 to the then Reviewing Officer, Shri Amar Sinha and the Ministry was also accordingly advised vide applicant's message dated 19.08.2014. It is also stated that despite submission of the APARs twice by the applicant it was maintained by the Reviewing Officer that the APARs had not been submitted and consequently the Reviewing Officer self initiated the applicant's APAR after his superannuation on 30.06.2017. The self initiated APARs indicating the period 01.06.2013 to 28.02.2014 contained adverse remarks by the Reviewing Officer. This act of Reviewing Officer is in violation of the DOP&T's extant instructions. The applicant has submitted that his APARs should not have been initiated after 30.06.2014 and that the same should have been communicated to him in 2014 itself. It is also stated that the said APAR was for the period up to 28.02.2014, even though the applicant had relinquished his charge at the Embassy of India at Kabul since 15.12.2013. The Reviewing Officer thus initiated the APAR as Reporting Officer/Reviewing Officer for the period from 01.06.2013 to 28.02.2014 and the submission of the same was delayed as the same was submitted after the superannuation of the Reviewing Authority. It is also stated that the applicant's working has been appreciated by the previous officiating Ambassador under whom the applicant has spent most of the time before Shri Amar Sinha, the Reviewing Authority. It is also stated that the Reviewing Authority delayed submission of APARs, which resulted in non-review of the same by the then Foreign Secretary, who demitted office on superannuation. The APAR was communicated to the applicant on 18.09.2017 more than two and a half months after the Reviewing Officer's superannuation.

4. The applicant submitted a representation dated 03.10.2017 to the respondents for expunging the said APAR from all records. However, it is stated that the respondents without assigning any reason and without considering the detailed representation of the applicant rejected the same and retained the overall grading of 'Good' recorded in the APAR for the period 01.06.2013 to 28.02.2014. This has resulted in applicant's delayed promotion to Junior

Administrative Grade (JAG). He has also not been promoted to the rank of Deputy Secretary even though his batch was promoted to Deputy Secretary in January, 2017.

5. Aggrieved by the action of the respondents, the applicant has filed this OA seeking relief in terms of quashing and setting aside the impugned order dated 29.01.2018 and to upgrade the APAR of the applicant as 'Outstanding'. It is also prayed that the adverse remarks/below benchmark grading given in the APAR of the applicant for the period 01.06.2013 to 28.02.2014 be expunged and his claim for promotion as Deputy Secretary with all consequential benefits be given to him by declaring the APAR for the period 01.06.2013 to 28.02.2014 as void ab-initio and treat the same as Non Reporting Period.

6. The respondents in the counter reply have submitted that the applicant served as Second Secretary in Embassy of India, Kabul from 24.12.2011 to 15.12.2013. Till January 2017, the applicant did not inform the Ministry about submission of his APARs to his Reporting Officer for the periods 01.09.2010 to 31.03.2011, 01.04.2013 to 31.12.2013 and 01.01.2014 to 31.03.2014. On 04.08.2016 Shri Amar Sinha, the then Secretary (ER) in the Ministry of External Affairs and former Ambassador of India to Kabul, who was Reviewing Officer of the applicant for the period 01.04.2013 to 30.09.2013 and Reporting Officer for the period 01.10.2013 to 15.12.2013 had requested the applicant to submit his APAR for the period 2013-2014 as the same had not been received by him. The applicant according to respondents refused to submit the APAR for the period 01.04.2013 to 30.09.2013, which he claims to have given to Shri A. G. Algur, the then Deputy Chief of Mission. The applicant also refused to submit his APAR for the period 01.10.2013 to 15.12.2013 to the former Ambassador stating that the period was less than three months.

7. As the applicant did not respond to various reminders and as his APAR was required for consideration of his promotion to JAG, he was issued a show cause notice on 09.12.2016 to submit his APAR. However, the applicant in his reply on 02.01.2017 stated that the said APAR had been submitted to the concerned Reporting Officers on time. The applicant yet again did not forward his self appraisals to the Ministry. Another memorandum was issued to the applicant on 20.04.2017 asking the applicant to explain the reasons within seven days for not submitting the APAR in a timely manner and to show cause as to why disciplinary action would not be initiated against him for non submission of APAR. In his reply dated 24.05.2017, the applicant stated that he had resubmitted his APAR for the period 15.06.2013 to 15.12.2013 to Shri Amar Sinha, the then Ambassador of India to Kabul and had informed the Ministry on 19.08.2014, however, there was no confirmation with regard to the same. In view of the refusal of the applicant to submit his APAR, Shri Amar Sinha, former Ambassador of India to Kabul was requested by the Ministry to self initiate the applicant's APAR on 30.06.2017, without the self appraisal of the applicant.

8. The respondents in their counter reply have opposed various other points

raised in the OA and stated that applicant's earlier APAR for the period 01.04.2012 to 31.03.2013 has also not been received by the applicant's previous Reviewing Officer. The APAR, therefore, had to be declared as Non Reporting Period in 2017 as both the Reporting officer and Reviewing Officer had superannuated by then. It is also stated that the representation of the applicant against the grading given by the Reviewing Officer for the APAR period 01.06.2013 to 28.02.2013 was examined by the Ministry in a quasi judicial and dispassionate manner and it was decided to maintain status quo in the grading for the period. The respondents have also mentioned that the applicant was not granted Junior Administrative Grade along with his batch-mates in view of a pending enquiry against the applicant and when the clearance was granted, the applicant was promoted to Junior Administrative Grade w.e.f. 01.01.2017. The subsequent DPC has not granted him the rank of Deputy Secretary as the benchmark grading for getting the rank of Deputy Secretary was 'Very Good' and the applicant's APAR of 01.06.2013 to 28.02.2014 graded him as 'Good'.

9. Learned counsel for the applicant reiterated the points in the OA and relied upon the following judgments:-

"(a) S.T. Ramesh vs. State of Karnataka & Anr. (Civil Appeal No. 868/2007) decided on 20, February, 2007 by Hon'ble Supreme Court.

(b) State Bank of India Etc. vs Kashinath Kher & Ors. Etc., 1996 AIR 1328.

(C) Union of India and Ors. vs. Chandra Kanta [WP(C)-6268/2015] decided on 08.03.2019 by Hon'ble High Court of Delhi."

These judgments are not particularly relevant to the facts of this case.

10. The counsel of the applicant also opposed the submission of the respondents in the rejoinder.

11. Heard the Learned counsel for the applicant and respondents and perused the records.

12. The applicant was posted in Kabul from December, 2011 to December, 2013. This period involved two of his APARs, one covering the period, April, 2012 to March, 2013 and the second from April, 2013 to December, 2014. During the period of the 1st APAR, the applicant worked under Shri G. Mukhopadhaya, the then Ambassador of India to Afghanistan, who was also the Reviewing Officer. As stated by the respondents in their counter reply, the APAR for the period 01.04.2012 to 31.03.2013 was also not received by the applicant's previous Reviewing Officer and due to non-receipt of self initiated APAR for this period and retirement of both the Reporting and Reviewing Officer, the APAR period between 01.04.2012 to 31.03.2013 had to be declared Non Reporting Period in 2017 by the respondents. For the period 01.04.2013 to 15.12.2013, wherein the applicant's self initiated APAR was reportedly non submitted, the same had to be, at a later stage initiated by the Reporting/Reviewing Officer. This had to be done as no self initiated APAR had been submitted by the applicant to the reporting

officer who had already superannuated on 30.09.2013. The Reviewing Authority thus had to initiate the APAR as Reporting/Reviewing Officer on the advice of Ministry of External Affairs for the period, June 2013 to 15.12.2013 during the time he was posted in Kabul. This was necessary in view of non submission of APAR by the applicant and his pending promotion. The Reporting/Reviewing Officer and the then Ambassador of India to Kabul commented on various aspects of the officer's performance in a detailed pen picture, rather adversely. The applicant was however graded as 'Good' for this period. Later, a detailed representation of the applicant was considered in the Ministry and the Competent Authority after careful consideration of the representation of the applicant decided to retain the overall grading of 'Good'.

13. The basic points raised by the applicant and by his learned counsel during the arguments were regarding the claim of the applicant to have submitted his self initiated APAR to his Reporting Officer and secondly about the Reviewing Officer having initiated his APAR as Reporting/Reviewing Authority and that too for a brief period from 1st October to 15th December, 2013, which is less than three months. It is evident that the self initiated APAR of the applicant was not available. He should have, in the normal course, given his self initiated performance appraisal to the Reporting Officer and the Reporting Officer in turn should have forwarded the same to the Reviewing Officer. The respondents have confirmed that the self initiated APAR of the applicant for the period 01.04.2013 to 30.09.2013 had not been submitted and was not available. At a later stage when the said APAR was required for consideration for promotion of the applicant, the respondents requested the Reviewing Authority, the then Ambassador of India in Afghanistan, under whom the applicant had worked for the period from 01.06.2013 to 15.12.2013 to initiate the APAR of the applicant in the capacity of both the Reporting/Reviewing Officer. As mentioned the Reporting Officer of the applicant had superannuated on 30.09.2013. Therefore, the contention that Reviewing Authority could not have initiated the APAR is incorrect as the APAR has been written for the period of the applicant's stay in Kabul under the Reviewing Authority, i.e., from June, 2013 to December, 2013. It is not a fact that despite availability of the self initiated APAR as claimed by the applicant, the Reviewing Authority had on his own initiated the said APAR. In fact, it was on the request of the respondents that he initiated the APAR as Reporting/Reviewing Officer as the same was also required for consideration for his promotion. The detailed pen picture provided by the Reviewing Officer and the APAR was given to the applicant for submitting his representation. In his representation on the APAR the applicant has also submitted that the said APAR contains accusations of gross dereliction of duty but fails to adduce any documentary evidence for the said period and thus, the observation is wholly capricious and is an afterthought. The applicant submitted a detailed representation and the Competent Authority having considered the same decided to retain the grading as 'Good'.

14. It is important to note that self initiation of APAR of the Officer by the Reviewing Officer was done in view of non-availability of APAR of the applicant in

the Ministry required for his impending promotion. In the counter reply, it is clearly indicated that on the request of the Ministry, the then former Ambassador of India to Kabul was requested to initiate the APAR of the Officer as Reporting/ Reviewing Authority, which was submitted by him on 30.06.2017, the day of his superannuation. Not only the officer had been graded on various qualities in the general assessment but also on various other parameters. It would not be worthwhile indicating details mentioned in the pen picture by the Reviewing officer as this does not make a happy reading. Similarly, it is also not worthwhile mentioning claims made and the language used by the applicant in his representation. The APAR reported/reviewed by the then Ambassador could not be reviewed by the Foreign Secretary as the incumbent had demitted office on Superannuation on 28.01.2015.

15. The applicant was given an opportunity to submit his representation against the said APAR and the grading of 'Good' recorded for the period 01.06.2013 to 28.02.2014. The Competent Authority vide impugned order dated 29.01.2018 considered the same and retained the grading assigned in the APAR.

16. The applicant in support of his submission of the APAR had relied upon by Ministry of External Affairs letter dated 01.08.2017 indicating that as advised by Shri A. G. Algur, the applicant has submitted his APARs in a timely manner to the concerned Reporting Officer and further the same is an inadvertent omission on the official's part to notify the NGO section.

17. It is, however, obvious from the correspondence and submissions of the respondents that the said APARs were not submitted to the Reviewing Officer and the same were also not available with the Ministry. Therefore, as there was no other option, the same had to be initiated by the then Ambassador at a later date as Reporting/Reviewing officer since the initiated APARs by the applicant were not submitted by him and the Reviewing Authority had to initiate the same.

18. From the above mentioned, it is evident that the applicant's self initiated APAR was not available with the respondents and the same was initiated by the Reviewing Officer as Reporting/Reviewing Authority. The grading assigned was 'Good' and after the representation, the Competent Authority decided to retain the same. The impugned order dated 29.01.2018, however, is not a speaking one and it did not deal with various points raised and submissions made by the applicant, in his representation. It is mandatory for the Competent Authority, to furnish reasons in support of his conclusions. In the interest of justice, we are of the view that the representation of the applicant requires reconsideration by Respondent No. 1.

19. Accordingly, the O.A. is allowed and the impugned order is set aside. Respondent No. 1 is directed to consider the representation dated 05.01.2018 submitted by the applicant afresh and pass a detailed and speaking order, within a period of one month from the date of receipt of a certified copy of this order. All the pending MAs stand disposed of. There shall be no order as to costs.